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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

Coram :

THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

Crl.A.No.690 of 2004

State rep.

by the Inspector of Police,
Dharmapuri "Q" Branch
Dharmapuri District,
Crime No.01/1999 .. Appellant/Complainant

Vs.

Kalidoss .. Respondent

Prayer: Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to set aside the order of acquittal passed by the learned Principal District and Sessions Judge, Dharmapuri in S.C.No.137 of 2004 dated 09.11.2022 and convict the respondent herein for the offences with which he was charged.

For Appellant : Mrs.G.V.Kasthuri
Additional Public Prosecutor

For Respondent : Mr.R.Sankarasubbu

J U D G M E N T

The appeal is filed against the order of acquittal of the accused for the offences under Section 307 r/w.34 of IPC Act, Section 3(1) r/w.25(1-A) of the Arms Act, 1959 and Section 4(a) and (b) of the Indian Explosives Substances

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Act, 1908.

2. The case of the prosecution is that PW1/Sub Inspector ofPolice, "Q" Branch, Dharmapuri police station by name Kabilan was on patrol duty at 10.30pm on 18.06.1999 in front of Veerapathiraswamy Temple, Kadirnayakkanahalli within the jurisdiction of Madhikonpalayam Police Station, Dharmapuri District and at that time, he found the accused- Kabilan along with A1-Elango @ Sundararajan, A2-Seeni @ Srinivasan and they were in possession of country gun with cartridges and pipe bombs. On seeing the Police team, the accused A-1 threatened them and with dire consequences by brandishing a loaded shot gun and A4 insisted to throw bombs against PW1-Kabilan with an intention to kill him and thereby committed the act constituting the offences referred to above. The Police team managed and secured A1 and A2, whereas A3 and A4 escaped from the scene in a two wheeler. Thereafter, the Police team arrested A1,A2 and A4 and a case was registered under Section 307 r/w.34 of IPC Act, Section 3(1) r/w.25(1-A) of the Arms Act, 1959 and Section 4(a) and (b) of the Indian Explosives Substances Act, 1908 and final report was filed on 29.09.1999 before the learned Judicial Magistrate Court No.1, Dharmapuri as against A1 to A4. The case was initially heard by the Assistant Sessions Court, Dharmapuri in

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S.C.No.55 of 2000 and by judgment dated 20.07.2004 had acquitted the accused A1,A2 and A4. The accused A3-Kalidoss obtained bail on 11.07.2001 and remained absconding since 22.12.2003. Thus, the case was split up from S.C.No.58 of 2001 and taken as S.C.No.137/2004 before the Principal Sessions Judge, Dharmapuri as against A-3 Kalidoss and vide judgment dated 09.11.2022, acquitted A3-Kalidoss under section 235(1) of Cr.P.C on the basis of benefit of doubt and released the accused from the charges under Section 307 of IPC Act and Section 4(a) and (b) of the Indian Explosives Substances Act, 1908.

3. The case of the prosecution is sought to be established through PW1-Kabilan/Sub Inspector of Police, so called victim and Head constable who were present along with him in the scene of occurrence and VAO one Murugan who is the witness for the arrest and seizure of the accused, Head clerk attached to the court concerned and other independent and official witnesses and IO examined PW1 to PW17 and complaint, FIR, Rough sketch, observation mahazar, book series, requisition for chemical analysis and chemical analysis report produced as Ex.P1 to Ex.P15.

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4. The trial court on the basis of the available records found that the prosecution failed to establish the factum and manner of the occurrence and the collection of the materials in the course of investigation through independent witnesses and the case of the prosecution sought to be presented through the official witnesses suffer from various infirmity contradictions and inconsistency and the prosecution failed to produce all the relevant material objects and hence disbelieved the case of the prosecution and extended the benefit of doubt to the accused and acquitted the accused from the offences referred to above. Hence, this appeal by the state before this Court.

5. The learned Additional Public Prosecutor has seriously questioned the correctness of findings of acquittal mainly by relying on the evidence of the prosecution side witnesses.

6. Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in ***Babu Sahebagouda Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date –***

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19.04.2024), the Supreme Court had captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

> *37. This Court in the case of* ***Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471)*** *encapsulated the legal position covering the field after considering various earlier judgments and held as below: -*
>
> > "*29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words:* ***(Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]***
> >
> > > "*42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
> > >
> > > *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*

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(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal

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jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

38. Further, in the case of ***H.D. Sundara & Ors. v. State of Karnataka (2023 (9) SCC 581)*** *this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -*

"8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

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8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers

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from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court." (Emphasis Supplied)

7. Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappreciate the evidence available on record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial court, considered overall on the materials placed, is just and reasonable that

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the view taken by the trial court is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.

8. In light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find out whether the view arrived at by the trial court is based on the materials available on record or whether there are materials, which warrants grant of leave by this Court.

9. As already referred to the prosecution case is sought to be established through PW1 to PW3 official witnesses. The case of the prosecution is that on 18.06.1999 at 10.30 pm, in front of Veerapathiraswamy Temple, the accused- A3 along with other accused were found by PW1 to PW3 that they were in possession of country bomb and explosive substances unauthorisedly and on seeing the police, threw the same towards PW1-Kabilan with an intention to kill him. The evidence of PW1 to PW3 would undisputedly go to show that the police team reached the scene of occurrence at 10.00pm and there was total darkness and according to the prosecution, the

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source of light was torch light, in the custody of PW1. However, the official witnesses would not have seen and identified the accused in the torch light. Further the same is not seized and produced as one of the material objects herein and the failure to do so would go to the root of the prosecution case.

10. The next aspect to be seen is the factum and the manner of the occurrence as narrated in Ex.P8-FIR. It cannot be disputed that Ex.P8 FIR is the basis on which the criminal law is set in motion against the accused. The same is given on 19.06.1999 to Inspector of Police, "Q" Branch, Dharmapuri and the endorsement made on the portion of the complaint proceed to say that the same is received at 6.00am on 19.06.1999 along with two accused and Ex.P8 is the FIR registered on the basis of the complaint. Both the signature of the complainant and the officials were not found in FIR. The FIR does not contain the signature of the Inspector of Police who received the complaint and registered the case and the copy of the complaint is also not handed over by the Sub Inspector of Police and his signature also is not affixed in the relevant column in the first page of the FIR. Though it is pointed out by the learned Additional Public Prosecutor that the signature of the inspector of police is found at the end of the complaint failure to put signature at first page of the FIR cannot be easily brushed aside.

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11. The next aspect to be seen is the failure of the prosecution to produce any independent witnesses to prove the factum and manner of the occurrence as alleged by PW1 to PW3. Though the alleged scene of occurrence is admittedly a residential area having number of residences in and around the area none of them are cited and summoned as eye witnesses of the occurrence. Considering the time at which the occurrence taken place i.e, at 10.30pm on 18.06.1999 non-examination of any independent witnessess assumes greater importance. Further, the evidence of PW1 to PW3 on one hand and PW15-VAO on the other hand regarding the arrest and seizure of Material objects in the scene of occurrence do not corroborate with each other.

12. The trial court also rightly disbelieved the version of the prosecution that the accused who is found to be in possession of country gun with bombs did not attempt to throw it against PW1 as they were rounded off by the police official. The trial court also treated the failure on the part of the prosecution to produce any independent witnesses as one of the material factors, and to produce all the material objects seized from the accused including the explosive substances which was allegedly carried by the accused

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as fatal to the prosecution case. The trial court on due appreciation of the entire facts and the failure of the prosecution to adduce any sufficient material to prove the manner of the occurrence and seizure of the articles, rightly disbelieved the prosecution case and extended the benefit of doubt to the accused.

13. It is pertinent to note that in the appeal filed by the State as against the acquittal of the accused A1, A2 and A4 in Crl.A.No. 690 of 2004, the same was dismissed by this Court vide order dated 18.10.2011 and as against the respondent, the case was split in S.C.No.137 of 2004 and the Trial Court acquitted the accused-A3 following the aforesaid decision. This Court having confirmed the judgment of the Trial Court acquitting A1, A2 and A4 and following the same, the present accused-A3 has been acquitted. This Court finds no infirmity or perversity in the judgment of acquittal recorded by the trial court in respect of A3 .

14. In the result, the criminal appeal is dismissed.

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